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IN THE

Supreme Court of the United States

October Term, 1974

No. .....

CLEMENT J. SHEERAN, *et al.*,
Petitioners,

v.

GENERAL ELECTRIC COMPANY, a
New York Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioners, Clement J. Sheeran, *et al.*, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on December 16, 1974.

OPINION BELOW

The memorandum decision of the United States District Court for the Eastern District of Washington, the opinion of the United States Court of Appeals for the Ninth Circuit and the order of that court modifying its opinion and denying appellants' petition for rehearing appear in the appendix.

JURISDICTION

The judgment of the Court of Appeals was entered on December 16, 1974. This petition was filed within ninety days of that date and within the limit prescribed by the stay of mandate issued below. This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Are some 1600 former employees of General Electric Company at the United States Atomic Energy Commission's Hanford Project, whose employment with that company terminated involuntarily because of changes in contractors by the government, at times when their rights had vested under the company's pension plan, entitled to the benefit of,

1. Congressional policies and concerns expressed by 29 U.S.C. §§1101, 1232, and
2. Well-settled rules relating to interpretation and application of pension plans whereby such plans are to be construed liberally in favor of the covered employees and most strongly against the employers and vested rights thereunder are to be protected?

STATEMENT OF THE CASE

1. Petitioners (vestees), some 1600 in number, are former employees of respondent, General Electric Company (G. E.), at the Federal government's Hanford Project, in the State of Washington.

2. As a consequence of the government's replacement of G. E. as a prime contractor at Hanford, each vestee was separated involuntarily from employment

by G. E. before he reached age 65, his "normal retirement date", but at a time when his right to a G. E. pension had vested because of his length of service with the company and his monetary contributions to the pension plan.

3. After the vestees were separated involuntarily from employment with G. E., company pensions were increased by cost-of-living adjustments in 1967 and 1971. The 1967 increase was calculated by reference to the employee's "average annual compensation" during the calendar years "1955, 1956 and 1957". The 1971 increase was calculated by such average annual compensation in "1959, 1950 and 1961". Vestees were employed actively by G. E. and contributed the prescribed monetary amounts to the plan during the years referred to.

4. G. E. denied the 1967 and 1971 increases to the vestees because they were separated from employment with the company before attainment of age 65 which is to say that such increases were denied as a consequence of the shift of government contractors at Hanford.

5. In denying the 1967 and 1971 increases to the vestees, the company departed from the "manner" of computing pensions which was operative when the rights of the vestees became fixed under the pension plan in that historical and contractual equality of treatment for those in vestees' position and those re-

tiring directly from the company's service was unilaterally renounced and abandoned.

6. Denial of the 1967 and 1971 increases to the vestees is contrary to the material language of the pension plan which was drafted and published by the company and adhered to without realistic choice by the covered employees. Thus, in its "Section IV", the plan created pensions consisting of "past service" and "future service annuities calculated in accordance with specified formulas and embodied the following guaranty in its "Section XII":

> ". . . . there shall be payable to an employee leaving the service of the Company after his pension right has vested, a pension commencing at his normal retirement date, computed in the manner provided by Section IV *as though such employee had remained continously in the service to his normal retirement date (the future service annuity portion of such pension being based only upon compensation earned by such employee prior to the date of termination of his employment)* . . ." Emphasis supplied. (Full text in Appendix D).

7. Notably, "Section IV" of the plan, which is set forth fully in Appendix D, does not distinguish between those who remain in G. E.'s service until attainment of age 65 and vestees, who do not. On the contrary, Section IV embraces a "*manner*" of computing future service annuities which is productive of *uniform* treatment for all pensioners who retire at

age 65. Section XII provides that this manner of computation will be preserved and assures each vestee that he will receive a pension at age 65 "computed in the manner provided by Section IV as though such employee had remained continuously in the service to his normal retirement date".

8. Although G. E. contends that vestees need not be accorded the 1967 and 1971 increases "as though [they] had remained continuously in the company's service" to age 65 because Section XII refers only to "computation" of a pension and not the pension itself, such contention is contrary to the plain purport of the language in issue, counter to the reasonable expectations of the vestees and, at best, an acknowledgment of ambiguity and uncertainty, which, under thoroughly settled law ought to be resolved in the vestees' favor. 56 CJS §169 (a); *Rochester Corporation vs. Rochester*, 450 F. 2d 118, n. 4, p. 121 (CA 4, 1971); *Frietzsche vs. First Western Bank*, 168 Cal. App. 2d 705, 336 P. 2d 589 (1959); *Scott vs Greer*, 229 Ark. 1043, 320 S. W. 2d 262 (1959); *Ulmann vs. Sunset-McKee Company*, 221 F. 2d 128, 133 (CA8, 1955); *Forrish vs. Kennedy*, _____Pa._____, 105A. 2d 67 (1954); *Sigman vs. Rudolph Wurlitzer Co.*, 550 Ohio App. 4, 11, N.E. 2d 878 (1937); *Klench vs. Board of Pension Commissioners*, 79 Cal. App. 171, 249 P. 2d 46 (1926).

9. When the vestees sought the 1967 and 1971 increases before the district court by motion for

summary judgment, the motion was denied without acknowledgment of the rules of construction cited above, although the court indicated that the vestees' claim failed only for lack of one comma in Section XII. Upon vestees' interlocutory appeal advanced by them in accordance with permission granted, the United States Court of Appeals for the Ninth Circuit summarily affirmed the decision of the district court by an unpublished memorandum which declined to recognize or otherwise refer to the rules aforesaid.

REASONS FOR GRANTING THE WRIT

Because the "well-being and security of millions of employees and their dependents are directly affected by [pension] plans" the Congress has recently declared that "they are affected with a national public interest". At the same time, the Congress has expressed special concern for employees situated similarly to the vestees here, *i. e.*, employees who are prejudiced relative to pension programs "as a consequence of job transfers or loss of employment resulting from terminations or modifications of federal contracts". 29 U.S.C. §§ 1001, 1232.

This court has made it plain that,

> "Under established contract principles, vested retirement rights may not be altered without the pensioner's consent. *Allied Chemical and Alkalai Workers of America vs. Pittsburgh Plate Glass Company*, 404 U.S. 157, 182, n. 25-26, 92 S. Ct. 383, 30 L. Ed. 2d 341 (1971)

Other courts have pointed out repeatedly that:

"Private pensions and retirement plans are liberally construed in favor of the employee, it being the general rule that pension plans formulated by an employer are to be construed most strongly against the employer. *Frietzche v. First Western Bank and Trust Company*, 168 Cal. App. 2d 705, 336 P. 2d 589 (1959).

"Pension plans are to be liberally construed in favor of the employee. *Klench v. Board of Pension Fund Commissioners*, 79 Cal. App. 171, 249 P. 46 (1926).

"The general rule is that pension plans, formulated by an employer, are construed most strongly against the employer. *Sigman v. Rudolph Wurlitzer Co.*, 50 Ohio App. 4, 11 N.E. 2d 878 (1937).

"Pension plans are to be given liberal construction in favor of employee. *Smith v. Union Carbide*, 232 F. Supp. 980 (1964).

"Retirement and pension acts are to be liberally construed to effectuate their humane purposes. *Scott v. Greer*, 229 Ark. 1043, 320 S.W. 2d 262 (1959).

This case involves each of the foregoing policies and principles and the resultant pension rights of some 1600 people who have contributed substantially to advancement of the national interest at Hanford over the past three decades. As yet, the case has not been considered judicially in terms of such policies and principles which are of consequence to employees at large as well as to the vestees here. Under such circumstances, the petition should be granted so that this

court can accord concrete and timely affect to the emerging Congressional policies and concerns and lay down undeniably authoritative rules for construction of pension plans in the contemporary context.

Respectfully submitted,

David E. Willians and Rembert Ryals, of
Critchlow, Williams, Ryals & Schuster
Attorneys for Petitioners

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CLEMENT J. SHEERAN, et al, *Plaintiffs*, vs. GENERAL ELECTRIC COMPANY, a New York corporation, *Defendant.*	CIVIL NO. 2843 MEMORANDUM DECISION AND ORDER

Plaintiffs are former employees of defendant General Electric Company at the Hanford atomic project in Richland, Washington, most of whom apparently were terminated in 1965 when defendant lost its status as a contractor and discontinued its operation of the project. Upon entry of a pretrial order, plaintiffs moved for summary judgment contending that contrary to the provisions of the General Electric pension (Ex. 15) they were denied specific pension benefit increases written into the plan subsequent to their termination in 1965. The parties appear to be in agreement that there are no issues of material fact to be resolved with respect to the interpretation of the provisions of the pension plan as originally drafted in 1946 and subsequently amended and that summary judgment is an appropriate way to dispose of that issue.

As was indicated in the memorandum decision denying plaintiffs' motion to remand, the pension plan was made available to a large number of the plaintiffs

pursuant to the terms of collective bargaining agreements between defendant and the Hanford Atomic Metal Trades Council and the Hanford Guards Union. The same plan was uniformly extended to other employees, including the eligible remaining plaintiffs, not covered by such agreements. Either way, it is undisputed that the pension plan is a part of the basic employment contract between the parties and that plaintiffs' pension rights are governed thereby.

The pension plan which was in effect at the time most of the plaintiffs left the employ of defendant and which is the source of any rights they may have was adopted on September 30, 1963.[1/] It provided in Section XII (1) that a participating employee would acquire a vested right to his pension either "(i) upon completion of 15 years of credited service, or (ie) upon completion of 10 years of credited service and attainment of age 35 or over while in the service of the company." All of the plaintiffs concededly qualify as vestees under this provision.

The question of whether the plaintiffs as vestees are entitled to specific increases subsequent to their termination turns to a great extent upon the interpre-

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1/ Section XIV (1). It is possible that some plaintiffs may have terminated or been terminated after subsequent amendments to the plan; this, however, does not affect the result here since all the language upon which plaintiffs rely in this case has remained unchanged to date.

tation given the following language from section XII (2) of the plan:

> . . . there shall be payable to an employee leaving the service of the Company after his pension right has vested, a pension commencing at his normal retirement date, computed in the manner provided by Section IV as though such employee had remained continuously in the service to his normal retirement date (the future service annuity portion of such pension being based only upon compensation earned by such employee prior to the termination of this employment) . . .

Plaintiffs argue that this language entitled each of them to a pension which is the same in amount as it would have been had they remained with the company until their normal retirement dates, as such dates are defined in section III, less certain exceptions specifically set out in the 1963 version of the plan, *e. g.* "supplemental" and "additional" payments provided by section XIV and amounts based upon compensation which would have been earned between actual termination and the normal retirement date. This pension, according to the argument, would include the increases granted after 1963 by sections XIV (19) and XIV (21) to those actually retiring at the normal retirement date.[2/] Although the Court finds this construction not thoroughly unreasonable, it is persuaded upon

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2/ Section XIV (19) reads in pertinent part:
Effective January 1, 1967 and applicable to pensions payable on or after January 1, 1967 the

future service annuity to the credit of normal, optional and disability pensioners on the pension rolls on January 1, 1967 (but excluding persons receiving pensions under the provisions of Section XII) shall be increased by an amount equal to 3/10ths of one percent of the pensioner's average annual compensation while participating in the Plan during the three calendar years 1955, 1956 and 1957 where applicable or, for those who retired before 1958 in the three calendar years preceding the pensioner's last day at work prior to retirement (with a minimum of $12), multiplied by the pensioner's full years of credited service as of December 31, 1956 or as of his date of retirement, if earlier.

And Section XIV (21) reads in pertinent part:

Subject to approval by the Company, effective January 1, 1971 and applicable to pensions payable on or after January 1, 1971 the future service annuity to the credit of normal, optional and disability pensioners on the pension rolls on January 1, 1971 (but excluding persons receiving pensions under the provisions of Section XII shall be increased by an amount equal to 15/100ths of one percent of the pensioner's average annual compensation while participating in the Plan during the three calendar years 1959, 1960, and 1961 where applicable or, for those who retired before 1962 in the three calendar years preceding the pensioner's last day at work prior to retirement (with a minimum of $5), multiplied by the pensioner's full years of credit service as of December 31, 1960 or as of his date of retirement, if earlier.

a reading of the contract as a whole that the intent of the plan as written was otherwise and, accordingly, that plaintiffs' motion for summary judgment must be denied.

Initially, the Court notes that all four versions of the plan submitted to the Court provide that the rights of any employee under the plan "are governed by the provisions of the Plan in effect at the date of such employee's retirement or termination of service." Section XIV (1). As already indicated, sections XIV (19) and XIV (21), which contain the provisions granting the increases in question, were not in effect at the date of termination for any plaintiff in this case. Plaintiffs argue, however, that section XIV (1) does not detract from the merits of their claim inasmuch as the language in section XII (2) upon which they base the claim was in the 1963 plan and, therefore, was in effect at the time of their termination. Although the Court finds section XIV (1) suggestive of the result in this case, plaintiffs' argument with respect thereto cannot be completely discounted.

As defendant points out, however, the suggestion found in section XIV (1) is strongly supported by subsections (1) and (2) of section XVIII. The former of these two subsections gives the Board of Directors of the defendant company the power to amend the plan from time to time. The latter provides exceptions, the relevant one stating that no amendment "shall ad-

versely affect to a material degree . . . the pension, *computed to the date of amendment*, of any employee whose pension right vested prior to the date of such amendment." [Emphasis supplied.] The import of these subsections, in view of the Court, is that vested rights obtain only with respect to amounts *computed to the dates of amendments*. Accordingly, on the day of the 1967 amendment, plaintiffs had vested rights only with respect to amounts which could be computed up to that day and not with respect to amounts which could be computed pursuant to increases granted on that day or thereafter. The Board of Directors, under the language of section XVIII, was under no obligation to vest rights in plaintiffs to such amounts as would be derived from the 1967 amendment itself, and, of course, the same conclusion applies with respect to the 1971 amendment. No vestee, therefore, could have had a vested right to any increase granted by one of the amendments unless such increase was granted specifically to vestees by the amendment itself. Obviously, the amendments now in question did not do so.

Close scrutiny of the language of section XII (2) suggests, moreover, that the analogy between vestees and those retiring directly from the service of the company is drawn only to make the manner of computation set out in section IV applicable to vestees. Section XII (2) does not provide that vestees will receive a pension *the amount* of which is to be precisely

the same "as though such employee had remained continuously in the service to his normal retirement date." To the contrary, the quoted phrase refers to and specifically modifies the words immediately preceding it, *i. e.* "computed in the manner provided by Section IV." Were the drafters to have inserted a comma after the term "Section IV", plaintiffs argument that they are entitled to the same amount granted to those retiring directly from the service of the company and not merely to the same manner of computation (that which is set out in section IV) would be more persuasive. It could then be argued with some force that the crucial phrase modifies the word "pension" and serves to make the pensions for the two classes of pensioners equivalent to a greater extent than is accomplished simply by using the manner of computation set out in Section IV as a component of both types of pensions.

As plaintiffs suggest, the amount derived from the specific formulae in section IV is the basic component of each of the two types of pensions, and reference to such formulae under the 1963 version of the plan would produce pensions for plaintiffs' roughly in parity with the pensions of those who retired directly from the service of the company (with the exceptions already noted). Further reference, however, would have to be made to other sections, and specifically to section XIV, to determine the total amount of any individual's pension. Section XII (2) contains nothing which directs reference to section XIV for purposes

of computing plaintiffs' pensions and, with the exception of the 1961 and 1963 increases specifically granted to vestees along with those retiring directly from the service, section XIV itself confers no rights upon plaintiffs to such increases.

Plaintiffs argue, however, that sections XIV (19) and XIV (21) "state in effect that the future service annuities to the credit of normal, optional and disability pensioners, and excluding only vestees, shall be increased by a certain percentage amount. The effect then of these two sections is to change the basic formula found in section IV by which the amount of pensions is computed." Plaintiffs' Reply Memorandum, p. 2. This argument misconstrues the nature of sections XIV (19) and XIV (21). These two sections do not merely amend the formulae set out in section IV and certainly do not state that the amount derived from section IV is simply to be increased by a certain percentage, as is implied by plaintiffs' argument. Although a percentage figure does appear in each of the two subsections of XIV, the percentage is not a percentage of the future service annuity as derived from section IV but is rather a percentage of a figure which is entirely independent of the future service annuity as derived from section IV, *i. e.*, it is a percentage of the average annual compensation of the employee during specific three-year periods.

Although the result reached in this matter by the Court is consistent with that reached by the Pension Board, the Court has given no weight to the conclusion of the Board and declines to do so for two reasons: first, the record contains an inadequate statement of the reasons underlying the Board's conclusions; and second, the membership of the Board is comprised solely of appointees of one party to the contract, the defendant.

Having thoroughly considered the arguments of counsel and the files and records in this case and having concluded that plaintiffs' motion is without merit, now, therefore,

IT IS ORDERED that plaintiffs' motion for summary judgment be and the same hereby is denied.

DATED this 13th day of September, 1973.

S/ William J. Lindberg
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CLEMENT J. SHEERAN, et al.,
Plaintiffs-Appellants,
vs.
GENERAL ELECTRIC COMPANY,
a New York corporation,
Defendant-Appellee.

No. 73-3346

MEMORANDUM

[December 16, 1974]

Appeal from the United States District Court
for the Eastern District of Washington

Before: TRASK and SNEED, Circuit Judges, and GRAY,* District Judge.

The plaintiffs appeal from the order of the District Court, dated September 13, 1973, which denied the plaintiffs' motion for summary judgment. We affirm.

We are unable to agree with the plaintiffs' contention that the combination of Sections XII (2) and IV of the Pension Plan can properly be interpreted to mean that the plaintiffs are entitled to the increases in pension benefits that they claim under Section XIV, subsections (19) and (21). Section XII does not say

*Honorable William P. Gray, United States District Judge, Central District of California, sitting by designation.

that people in the positions of the plaintiffs shall receive all increases in pension benefits that may later be accorded the then current employees. Instead, it provides that people in the positions of the plaintiffs shall have pension rights "computed in the manner provided by Section IV . . . ." The latter Section sets forth the mathematical formulae for determining the pension payments that each participating employee shall receive; but computing the pension rights in the manner so provided does not result in the inclusion of the increases provided in Section XIV (19) and (21).

The addition (in Section XII) of the phrase "as though such employee had remained continuously in the service to his normal retirement date", serves only as a factor in the manner of computation called for in Section IV.

Our reasoning is in substantial accord with that set forth by the trial judge in his memorandum of decision.

The order denying the plaintiffs' motion for summary judgment is affirmed; inasmuch as this presumably disposes of the litigation, we assume that on remand judgment for the defendant will be entered.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLEMENT J. SHEERAN, et al.,
Plaintiffs-Appellants,
vs.
GENERAL ELECTRIC COMPANY,
a New York corporation,
Defendant-Appellee.

No. 73-3346

ORDER

The MEMORANDUM decision announced by this court under date of December 16, 1974, is modified by deleting the first paragraph thereof and substituting the following in its place:

> "The plaintiffs appeal from the order of the District Court, dated September 13, 1973, which denied the plaintiffs' motion for summary judgment. The matter was certified to this court and accepted for interlocutory review, pursuant to 28 U.S.C. § 1292 (b). We now affirm."

The petition for rehearing filed on behalf of the appellants is denied.

s/ OZELL M. TRASK, Circuit Judge
s/ JOSEPH T. SNEED, Circuit Judge
s/ WILLIAM P. GRAY, District Judge

APPENDIX D

SECTION IV

AMOUNT OF PENSION AT NORMAL RETIREMENT

(1) Upon retirement in accordance with the provisions of Section III, there shall be payable to a participating employee an annual pension consisting of one or both, depending upon his eligibility, of the two following separately computed annuities:

(a) A future service annunity payable in respect of service on or after September 1, 1946 to an employee who shall have made contributions as provided by Section II.

(b) A past service annuity payable in respect of service prior to September 1, 1946 to an employee having one or more years of continuous service on that date who remains continuously in the service until his retirement or until his right to such annuity vests under the provisions of Section XII.

(2) The future service annuity payable to each participating employee upon retirement on or after his normal retirement date shall be an amount equivalent to the sum of:

(a) 40% of the aggregate contributions of the employee under the Plan during the period from September 1, 1946 to August 15, 1955, and

(b) 0.8% of the employee's total compensation earned after August 14, 1955 and before his normal retirement date, while he was duly enrolled in the Plan, up to an amount with respect to each calendar year which is equal to but not in excess of the maximum remuneration of an individual which, in that calendar year (or applicable portion thereof), was subject to the Federal Social Security tax, plus 2% of the remainder of such compensation.

(3) The past service annuity payable to each eligible employee upon retirement on or after his normal retirement date (normal retirement date for the purposes of this paragraph (3) and of paragraph (4) of this Section in the case of a woman employee being the first day of the month following her attainment of age 60) shall be determined as of September 1, 1946 by:

(a) Multiplying 1.165% of the past service earnings of the employee, in the case of a man employee, or 1.5% of such past service earnings in the case of a woman employee, by a number equivalent to the total number of years, computed to the nearest full year, of continuous service which the employee will have at his normal retirement date.

(b) Subtracting from the amount determined in (a) the sum of: 40% of the first $600 of the employee's past service earnings and 10% of the remainder, up to a maximum of $2,400, of such past service earnings,

(c) Multiplying the net amount determined in (b) by a fraction, the numerator of which is the

number of years, computed to the nearest full year, of continuous service to September 1, 1946 and the denominator of which is the total number of years, computed to the nearest full year, of continuous service which the employee will have at his normal retirement date.

However, no such past service annuity shall be less than $12 for each year, computed to the nearest full year, of continuous service to September 1, 1946.

(4) The term "past service earnings," as used in paragraph (3) above, means:

(a) In the case of a man employee age 55 or over, or of a woman employee age 50 or over, on September 1, 1946, who will have ten or more years of continuous service at his normal retirement date, the estimated average annual compensation of such employee for the ten years next preceding his normal retirement date. Such estimated average annual compensation shall be determined by:

(i) Computing the total actual compensation of such employee for the period from January 1 of the year in which the employee attained age 55, or age 50 in the case of a woman employee, to the end of the calendar year 1945,

(ii) Computing, on the basis of the annual rate of the employee's compensation for a normal work week, not exceeding forty hours, at July 1, 1946, the estimated total amount of the employee's compensation for the remainder of the ten-year period commencing January 1 of the year in which the employee attained age 55, or age 50, in the case of a woman employee,

(iii) Dividing the sum of (i) and (ii) by ten.

However, the past service earnings of an employee retiring within one year after September 1, 1946 shall not be less than the amount of his actual average annual compensation for the ten years next preceding the actual date of his retirement.

(b) In the case of each other employee having one or more years of continuous service at September 1, 1946, the annual rate of compensation for a normal work week, not exceeding forty hours, of such employee at July 1, 1946. If such employee does not have a July 1, 1946, annual rate of compensation because of absence from work at that date or if such employee returned from military service subsequent to January 1, 1946, the annual rate of compensation shall be determined by the Pension Board within one year from the date of re-employment but such annual rate shall not be less than the annual rate at date of re-employment nor more than the highest annual rate during the first six months after the date of re-employment.

(5) Each pension computed under this Section shall be independent of, and in addition to, any benefits payable to the employee under the Social Security Act of the Federal Government.

(6) Effective January 1, 1961, and applicable to pensions payable on and after January 1, 1961 and prior to October 1, 1963, the past service annuity, if any, to the credit of employees participating in the Plan on January 1, 1961 shall be increased by 30%.

(7) Effective September 30, 1963 and applicable to pensions payable on and after October 1, 1963, the past service annuity, if any, to the credit of employees participating in the Plan on September 30, 1963 shall be increased by 45%.

(8) Effective September 30, 1963 and applicable to pensions payable on and after October 1, 1963, the future service annuity to the credit of employees participating in the Plan on September 30, 1963 that is in respect of service prior to January 1, 1951 shall be increased by 15%.

SECTION XII

Vesting Provision

(1) Effective September 30, 1963 a participating employee shall have a vested right to his pension either (i) upon completion of 15 years of credited service, or (ii) upon completion of 10 years of credited service and attainment of age 35 or over while in the service of the Company.

(2) Except as provided in paragraph (3), there shall be payable to an employee leaving the service of the Company after his pension right has vested, a pension commencing at his normal retirement date, computed in the manner provided by Section IV as though such employee had remained continuously in the service to his normal retirement date (the future service annuity portion of such pension being based only upon compensation earned by such employee prior to the date of

termination of his employment) except that the past service annuity portion, if any, of such pension shall be payable only if such employee had a vested right at September 1, 1946 or remained continuously in the service from September 1, 1946 to the date upon which his pension right vested under paragraph (1).

(3) An employee leaving the service of the Company and withdrawing his contributions under the provisions of Section XI shall forfeit his right to all the pension and other benefits provided by the Plan except that an employee having 20 or more years of credited service on September 1, 1946 shall have a vested right to the past service portion of such benefits, payable commencing at his normal retirement date.

(4) In lieu of the pensions provided by paragraph (2) or (3) an eligible employee leaving the service on and after September 30, 1963 may elect to receive the optional pension provided by Section V, commencing at a date designated by him, provided such date is within five years prior to his normal retirement date except in the case of a woman employee who was participating in the Plan on August 14, 1955, in which case such date shall be within ten years prior to her normal retirement date. Such eligible employee wishing to have pension payments begin prior to his normal retirement date, must make written application therefor, specifying the month in which he wishes the pension payments to commence, which month may not be less than two

calendar months following the month in which his application is received by the Company. Such election shall be irrevocable, except as to withdrawal under paragraph (2) of Section XI.

(5) An employee leaving the service of the Company who is eligible to receive a pension provided by paragraph (2), (3) or (4) of this Section may, upon compliance with the provisions of Section IX, elect to receive such pension in the form of the survivorship pension provided by that Section.

(6) An employee leaving the service of the Company after his pension right has vested under the provisions of paragraph (1) of this Section shall not be entitled to the disability pension provided by Section VII, nor to the supplemental payment provided by Section VI or XIV, nor to the additional payment provided by Section XIII or XIV, but in the event of his death, the death benefits provided by Section X (except paragraph (4) thereof) shall be payable provided he has not forfeited such benefits under the provision of paragraph (3) of this Section XII.

SUPREME COURT, U. S.

FILED

MAR 13 1975

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1007

CLEMENT J. SHEERAN, *et al.*,
Petitioners,

v.

GENERAL ELECTRIC COMPANY,
a New York corporation,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

JOHN GAVIN
Attorney for Respondent
410 Miller Building
Yakima, Washington 98901

MORTON MOSKIN
MICHAEL W. LEAVITT
Of Counsel

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1007

CLEMENT J. SHEERAN, *et al.*,

Petitioners,

v.

GENERAL ELECTRIC COMPANY, a New York corporation,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

Question Presented

Did the District Court and a unanimous Court of Appeals err when they held that General Electric had the contractual right under its Pension Plan to extend voluntary increases in pension benefits to certain categories of beneficiaries without extending the same benefits to all other categories of beneficiaries?

Statement

The petition herein seeks to review an order of the United States Court of Appeals for the Ninth Circuit which, on an interlocutory appeal, affirmed an order of the United States District Court for the Eastern District of Washington denying petitioners' motion for summary judgment.

In an attempt to support a grant of certiorari in this case, petitioners state that the questions presented are whether the courts below failed to give them the benefit of "Congressional policies and concerns", and whether the lower courts failed to construe the General Electric Plan liberally and in favor of the employee as against the employer.

The fact is that this is a case involving the construction of the provisions of a pension plan which are *sui generis.* This contract has been twice construed by the courts below, and the petitioners' contentions have been rejected. The result does not conflict with either federal policy or the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§1001 *et seq.* ("ERISA"). There is no basis for the grant of certiorari in this matter.

Proceedings Below

The petitioners in this Court, plaintiffs below, are former employees of General Electric at the Hanford Project located near Richland, Washington. At the time they left General Electric's employ, between 1965 and 1967, they

had each been employed by the Company for the requisite number of years to obtain vested rights under the General Electric Pension Plan. They were thus "vestees" under the Plan.

In 1967 and 1971 General Electric, by amendment to the Pension Plan after union negotiation with respect to certain aspects of the Plan, granted pension increases to several categories of participants in its Pension Plan but not to all categories of participants. The terms of the relevant amendments provided specifically that these increases were granted to participants who left General Electric's employ through normal, optional (early), or disability retirement, but not to vestees. Petitioners then brought this action, contending that another provision in the Pension Plan guaranteed vestees a contractual right to the 1967 and 1971 increases and to all future increases. They moved for summary judgment below, as they do here, on the basis of one sentence in Section XII of the Pension Plan, which they rely on to the exclusion of the balance of the contract.

In a careful and thorough opinion, the District Court concluded that on "a reading of the contract as a whole" petitioners' contentions must be rejected. (A-5)* The District Court did not, as petitioners argue here, indicate "that the vestees' claim failed only for lack of one comma in Section XII." (Petition, p. 6) In fact, the District

* Reference is to the appendix to the Petition. The petitioners' Appendix D cites only selective portions of the General Electric Pension Plan, and as the lower courts held, these sections cannot be read in a vacuum. Rather then burden this Court with the full Plan, however, reference is made to the District Court's opinion, which discusses certain of the relevant provisions of the Plan ignored by petitioners.

Court carefully construed the Plan as a whole, together with the one sentence in Section XII of the Plan upon which petitioners rely, and it concluded that their motion for summary judgment was "without merit". (A-9) The Court of Appeals, on an appeal pursuant to 12 U.S.C. §1292(b), affirmed. It held:

> "Section XII does not say that people in the positions of the plaintiffs shall receive all increases in pension benefits that may later be accorded the then current employees. Instead, it provides that people in the positions of the plaintiffs shall have pension rights 'computed in the manner provided by Section IV * * *.' The latter Section sets forth the mathematical formulae for determining the pension payments that each participating employee shall receive; but computing the pension rights in the manner so provided does not result in the inclusion of the increases provided in Section XIV(19) and (21).
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> "The addition (in Section XII) of the phrase 'as though such employee had remained continuously in the service to his normal retirement date', serves only as a factor in the manner of computation called for in Section IV." (A-10 to A-11)

ARGUMENT

The courts below did not err in their interpretation of the Pension Plan, and the result does not conflict with any federal policy or with the Employee Retirement Income Security Act of 1974.

A. The Employee Retirement Income Security Act of 1974

The vagueness with which petitioners refer to ERISA demonstrates that they are not claiming that the result below conflicts with any provision of that statute. The result is also consistent with the policy and purpose of that law. Unquestionably, it was the intent of Congress to protect employees' rights to pension benefits accrued during employment by requiring vesting for employees with certain minimum service. In furtherance of this policy, the Act contains certain alternative mandatory minimum vesting requirements. All are prospective in their application, and have no effect on the rights of already terminated employees.* They do not in any way prohibit an employer from voluntarily increasing the benefits of certain categories of pensioners without extending these benefits to vestees.

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* The actual vesting provisions of ERISA are effective, at the earliest, for plan years beginning after December 31, 1975. ERISA, §§211(b), 1017(a), (b); 29 U.S.C. §1061(b). The benefits of such vesting provisions will not extend to any employees whose service was terminated prior to the enactment of the Act unless such employees have three years of service subsequent to 1970. ERISA, §§203(b)(1), 1012(a); 29 U.S.C. §1053(b)(1), 26 U.S.C. §411(a)(4). None of the petitioners here had such service. All petitioners' service terminated in 1967 or prior years, and they were fully vested in all of the benefits accrued for them under the Plan at the time of their termination. (Petition, pp. 3, A-2).

In a section of ERISA relied on by petitioners, but not quoted, the Act provides for further study by the Secretary of Labor to investigate steps necessary to be taken to protect "to the extent feasible * * * against *forfeitures* of pension or retirement rights or benefits, *otherwise provided*, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts * * *." ERISA, §3032(a), 29 U.S.C. §1232(a) (emphasis supplied). The purpose of the Secretary's study, which will take up to two years, is to develop, if feasible, recommendations for Federal procurement regulations to protect such rights. Conference Report, H.R. Rep. 1280, 93d Cong., 2d Sess. 282 (1974). But here, as the courts below held, there was no "forfeiture" of pension rights "otherwise provided". Petitioners' vested rights under the Plan are precisely those rights which accrued to them when General Electric was replaced as the contractor of the Hanford Project and petitioners' employment was terminated.

Petitioners do additionally claim they possess rights to later increases granted to other categories of beneficiaries. But the Pension Plan does not so provide, and ERISA does not prohibit an employer from voluntarily increasing the pension benefits of one category of pensioner without providing the same increases to all other categories. Had the statute attempted to adopt this result, in fact, it would have rejected all prior authority on the issue, as the federal courts have held in every case in which the point has been raised that a pensioner has no inherent right to share in increased pension benefits which may be granted to other categories of beneficiary. See *infra*, pp. 7-9.

B. The Interpretation of Pension Plans and Judicial Authority

Petitioners also contend here that pension plans must be construed liberally in favor of the employees and against the employer. But petitioners made the same contention in the courts below. The courts concluded that a fair reading of the General Electric Plan as a whole could not support petitioners' construction of the contract. The petitioners here argue that the courts, as a result, failed to protect their vested rights. But the conclusion of both the District Court and the Court of Appeals was that the petitioners' vested rights were *not* altered without petitioners' consent, because they did not possess the right to force General Electric to include them in all future pension increases. Certiorari should not be granted so that this Court can again interpret a contract which has already been twice properly construed by two courts.

Moreover, the rule which petitioners appear to espouse, that an employer may not extend benefits to one group of pensioners without extending them to all, has been uniformly rejected by federal and state courts. See *Reynolds* v. *Galbreath* (S.D.N.Y. 66 Civ. 4312, March 17, 1969) (unreported), *aff'd per curiam on the basis of the District Court opinion*, 427 F.2d 719 (2d Cir.), *cert. denied*, 400 U.S. 926 (1970); *Hurd* v. *Illinois Bell Tel. Co.*, 136 F.Supp. 125 (N.D. Ill. 1955), *aff'd*, 234 F.2d 942 (7th Cir.), *cert. denied*, 352 U.S. 918 (1956); *Sessions* v. *Southern California Edison Co.*, 47 Cal. App.2d 611, 118 P.2d 935 (Dist. Ct. App. 1941); *cf. Nelson* v. *American Air Filter Co.*, 472 F.2d 1169 (9th Cir. 1973); *Kenny* v. *Hampton*, 475 F.2d 1323 (D.C. Cir. 1973).

In *Reynolds* v. *Galbreath, supra,* Allie Reynolds, a former major league baseball player, brought a class action against the Major League Baseball Players' Pension Committee, claiming a right to increased benefits which had been granted to participants in the Plan who had active service in the major leagues during or after the 1957 Major League Baseball season. The District Court held that Reynolds, as a former employee, had no substantive legal or equitable right to share in pension increases granted to other beneficiaries of the Plan. It said:

> "In the absence of an enforceable contract right to increased pension benefits, there is no judicial authority to create, for former employees, an equitable right to share, forever, in increases won by present employees in the course of bargaining. * * * The action of the Pension Committee—granting greater benefits to one class of players, and not another—was lawful and cannot be altered by juridical fiat."

The Second Circuit affirmed and this Court denied certiorari.

Likewise, in *Hurd* v. *Illinois Bell Tel. Co., supra,* the court stressed that a participant in a pension plan was not discriminated against by virtue of increased benefits granted to others. The court stated:

> "* * * [T]he only issue would seem to be whether it is unlawful for the defendants to liberalize their plan without applying the new terms retroactively, and in the future to employees already retired. That they may do this seems to follow from the decision in *Sessions* v. *Southern California Edison Co.* * * * This Court would be reluctant to impose an inflexible rule that an employer may not adopt more advantageous pension

rules for employees who have not yet retired without at the same time extending the full benefit of those provisions to employees already retired." 136 F.Supp. at 150.

The Seventh Circuit affirmed and this Court denied certiorari.

This consistent line of authority, undisturbed by this Court, shows clearly that there is no conflict between the result below and sound policy.

Conclusion

The interpretation of the General Electric Pension Plan by the District Court and Circuit Court does not deprive the petitioners of any of their vested rights, does not conflict with the Employee Retirement Income Security Act of 1974, and is consistent with federal and state judicial authority. The Petition does not raise any substantial question for consideration by this Court, nor does the result below conflict with the decision of any other court. Certiorari should be denied.

Respectfully submitted,

JOHN GAVIN
Attorney for Respondent

MORTON MOSKIN
MICHAEL W. LEAVITT
Of Counsel